



1212 New York Ave. NW,
Suite 900
Washington, DC 20005
202.525.5717

Free Markets. Real Solutions.
www.rstreet.org

Testimony from:

Jesse Kelley, Government Affairs Manager, Criminal Justice & Civil Liberties, R Street Institute

Regarding:

HOUSE BILL 5019, "An Act Concerning Fair Future Following Erasure of Criminal Records"

AND

SENATE BILL 403, "An Act Concerning the Board of Pardons and Paroles, Erasure of Criminal Records for Certain Misdemeanor and Felony Offenses and Prohibiting Discrimination Based on Erased Criminal history Record information."

March 9, 2020

House Committee on Judiciary

My name is Jesse Kelley, and I am the Government Affairs and Criminal Justice and Civil Liberties Manager at the R Street Institute, which is a nonprofit, nonpartisan, public policy research organization. Our mission is to engage in policy research and outreach to promote free markets and limited, effective government in many areas, specifically including programs and plans to promote successful reentry and reintegration into society after a period of incarceration.

Today, we discuss how Connecticut can best expand current expungement laws and allow for automatic erasure of convictions for eligible individuals. The R Street Institute strongly supports automatic record clearance because it promotes human dignity, enhances public safety and strengthens our communities.

Right now, a lack of knowledge, exorbitant fees and complex processes prevent many people from having their records expunged. "Clean Slate" would automate record clearance for individuals who have criminal records and who have remained crime-free for a given number of years.

An estimated 40,000 people in Connecticut have a criminal record.¹ Currently, individuals with criminal records are denied housing, employment, educational opportunities and the ability to reintegrate with

¹ Brian Sonenstein, "Connecticut Could be First State to Curb Blatant Discrimination Against People with Criminal Records," *Shadow Proof*, March 12, 2019. <https://shadowproof.com/2019/03/12/connecticut-legislation-blanket-discrimination-people-criminal-records>.

society. When people are denied these basic needs—like housing and the ability to earn income—it is not only an affront to human dignity but also harms public safety.

Particularly with expansive internet accessibility, 9 in 10 employers,² 4 in 5 landlords and 3 in 5 colleges are using electronic background checks.³ This means that any record—no matter how old or how minor—can put the basics of life permanently out of reach.

The pieces of legislation being discussed would amend the process that justice-involved individuals must currently undertake to clear their records. By making expungement automatic after a prescribed number of years for certain convictions, Clean Slate legislation would streamline the record clearing process and make it accessible for eligible individuals.

Moving toward automatic expungement is not a partisan issue; it's just good policy. Clean Slate improves our workforce, supports families and makes our communities safer. And, it supports the core of conservatism—a limited, effective government—so that individuals returning to our communities can thrive.

Thank you for your consideration.

Jesse Kelley, Esq.
Government Affairs Manager
Criminal Justice & Civil Liberties Policy
R Street Institute
jkelley@rstreet.org

****Please see the attached document by the R Street Institute's Associate Director of Criminal Justice & Civil Liberties Policy, Nila Bala, entitled: "The Case for a Clean Slate Bill in Connecticut."**

² "Background Checking—The Use of Criminal Background Checks in Hiring Decisions," SHRM, July 19, 2012. <https://www.shrm.org/hr-today/trends-and-forecasting/research-and-surveys/Pages/criminalbackgroundcheck.aspx>.

³ "Unlocking Opportunity Through Automated Record-Clearing," Center for American Progress, Nov. 15, 2018. <https://www.americanprogress.org/issues/poverty/reports/2018/11/15/460907/clean-slate-toolkit>.



Free markets. Real solutions.

R STREET SHORTS NO. 84

February 2020

THE CASE FOR A CLEAN SLATE BILL IN CONNECTICUT

Nila Bala

INTRODUCTION

According to national estimates, close to one-third of Connecticut residents, or around 1.2 million people, have a criminal record.¹ And for these “Nutmeggers,” a criminal record is a profound barrier to being a part of our community. According to the Council of State Governments Justice Center, records mean they face 559 barriers, codified in Connecticut’s various laws, with two-thirds of these related to work.² The collateral consequences of having a record are pervasive and broad, and often undermine public safety. For example, barriers to full employment can increase levels of reoffending.³ Lack of stable housing can also increase the risks of ending up back in the criminal justice system, with Connecticut’s homeless population lacking stability.⁴ In light of this, it is clear that records—sometimes minor and decades old—prevent individuals from fully participating in society.

Expungements are one mechanism to restore rights by removing records from public view. They are one of the most effective ways to reduce the bias and stigma those with a criminal record currently face. Unfortunately, the current process individuals have to endure to secure an expungement is complicated, expensive and difficult to understand. However, in the coming legislative session, Connecticut has

an opportunity to significantly change the barriers justice-involved individuals face with the passage of a “clean slate” bill. The Clean Slate initiative is a nationwide movement that works toward automatically expunging records and expanding eligibility for expungements.⁵ By automating expunging of certain offenses after a period of time has passed, a clean slate bill would take the onus off individuals to access what is often a difficult and bureaucratic process.

This paper examines the current state of pardon relief in Connecticut, and the potential effect of expanding expungement relief through a clean slate bill. As a similar bill was proposed in the last session, the present study will examine that bill, although plans to propose one in the current session are also in the works. In any event, the overall benefits to individuals, public safety and the economy urge its passage.

THE CURRENT EXPUNGEMENT PROCESS IN CONNECTICUT

In Connecticut, expungements are known as “absolute pardons” and are obtained through an application to the Board of Pardons and Parole.⁶ A lesser form of relief is a certificate of employability, that indicates the applicant is employable and cannot be discriminated against because of their criminal record (though their record would still appear in background checks).⁷

The current waiting period for an absolute pardon is thirteen months for non-conviction records, three years after the disposition of a misdemeanor and five years after a felony. The application requires that people remember the dates and details of any misdemeanors, felonies and even minor infractions (including traffic). Individuals are asked to fill out multiple forms, and attach documents establishing their rehabilitation. While the pardon itself does not require a fee, individuals must pay the state police to obtain their record, as well as arrange to be present at the hearing, if requested.⁸ The Board of Pardons and Parole meets twelve times a year to discuss petitions. The process and paperwork are complicated enough that many individuals hire a lawyer to help them through the process.⁹ The entire pardons process can take a year or longer, based on how many applications are received, and each individual can only apply once a year if their application is rejected for any reason.¹⁰

Last year, the state received 1,857 pardon applications, with 983 deemed eligible for relief, meaning they did not have pending charges, had paid all fines and fees, and had waited the appropriate period before applying.¹¹ This means that almost half of those who went through the process of applying were deemed ineligible, which suggests difficulty with understanding the process. Of those who were eligible, the Board of Pardons reports that 77 percent received either an absolute pardon or a certificate of employability (with

the significant majority of those applications receiving an absolute pardon).¹² However, since so many applications are rejected, the true acceptance rate for pardons is closer to 37.5 percent (the number of pardons approved divided by the number of applications received).¹³ When an individual is granted an absolute pardon, it means that “all police and court records and records of the state’s or prosecuting attorney pertaining to such case [are] erased,” meaning no one, including law enforcement can access the erased charges.¹⁴

THE POWER OF AN ABSOLUTE PARDON

Once pardoned, individuals in Connecticut are given a clean slate. Given that 9 out of 10 employers use a background check, and a criminal record reduces the callback rate by 50 percent, erasing a criminal record can be incredibly powerful.¹⁵ It can situate a person so that they have a real chance at meaningful employment. Indeed, after an expungement, one recent study found that wages increased by 25 percent.¹⁶ Once employment is obtained, lives improve, people can provide for their families and overall GDP also rises. In fact, upwards of 78 billion dollars is lost annually nationwide because of the stigma from criminal records.¹⁷ That amounts to a loss of up to \$1.2 billion in economic activity each year in the Constitution state alone, based on Connecticut’s percentage of the total GDP.¹⁸

In addition, a pardon in Connecticut means that for the purposes of licensure, that criminal record no longer exists. This is of key importance, as close to a quarter of jobs—often some of the most stable and well-paid career opportunities—require an occupational license.¹⁹ Connecticut is considered the 18th most onerous state by the Institute of Justice in terms of the regulations it imposes on licensed professions.²⁰ In recent years, the Connecticut legislature has thankfully relaxed the requirements for barbers and hairdressers, so even those who have a criminal record can still pursue the license.²¹ But, a pardon is still incredibly helpful for others.

It also ameliorates other collateral consequences that can prevent a person from fully reintegrating with their community. Indeed, Connecticut has one of the harshest felony disenfranchisement laws in New England: individuals are ineligible to vote while incarcerated and while on parole (in contrast to Maine and Vermont where individuals never lose the right to vote).²² The right to serve on a jury is lost upon conviction of a felony and restored automatically after seven years (but would be sooner with a pardon).²³ Civic participation is not only symbolically powerful, but empirical research suggests that it might be linked with lowered recidivism.²⁴

There is no question a pardon has multiple beneficial effects for individuals and their families. One in two children in America have a parent with a criminal record and face hampered future prospects as a result, including physical and

mental health issues, behavior problems, and diminished prospects for their own economic and educational outcomes.²⁵ This demonstrates that clearing criminal records has concrete benefits far beyond the individual.

BENEFITS OF A CLEAN SLATE BILL

Given these benefits, it is a shame that more individuals who are eligible do not take advantage of the process. One recent study estimated that only 6.5 percent of those eligible apply for an expungement.²⁶ It is no surprise that the application rate is so low, given how complicated it is. This is wasted time and effort on the part of these individuals, as well as a waste of taxpayer dollars for the time spent by the Board of Pardons processing applications that are otherwise deemed ineligible—often on technicalities.

In 2019, lawmakers proposed a clean slate bill, Senate Bill 691, “An Act Concerning the Connecticut Clean Slate Law.” The bill passed out of committee on a 21-19 vote, but ultimately the legislation did not pass during the last session.²⁷ Plans are to reintroduce a similar bill in the 2020 session. The 2019 Senate bill created a process to automatically erase certain misdemeanor criminal records after three years, as well as convictions for decriminalized offenses, like possession of small amounts of marijuana. Misdemeanors that are family violence crimes, nonviolent sexual offenses or sexually violent offenses, as well as all felonies, were not eligible for automatic erasure under the bill. Lower level felonies (C, D & E felonies) could be expunged after five years (though not automatically), with the burden of proof for denial on the state. For these offense categories, the Board of Pardons process would continue to apply.

Ideally, a 2020 bill could go even further, as research demonstrates that even felony offenses can be safely expunged.²⁸ The line between a felony and misdemeanor can sometimes be arbitrary and not reflect the seriousness of the conduct or the rehabilitation that has occurred after. For example, nonviolent drug possession can be a felony in Connecticut. When individuals remain crime free for a certain number of years, they are no more likely than any other individual in the general population to reoffend.²⁹ Automating misdemeanors and at least some felonies will leave just the most serious offenses for the board to consider, allowing them more time and discretion to make the best decision possible in those cases. Additionally, automation has the ability to reduce the “second chance gap,” the gap in access that currently exists between who is eligible and who actually applies for an absolute pardon. While the Board’s process is still a positive one to retain, it by no means assists all eligible participants. This is why maximizing eligibility under the clean slate initiative is so vital.

There will be short term costs. The fiscal note for the 2019 bill assumed a total of 8.5 million dollars, spread out over two years, for the Judicial Department, Office of the State Comptroller and the Division of Criminal Justice.³⁰ These costs take into account a twelve-month implementation period, and ongoing monitoring, that would include 55 new employees (30 of whom would be temporary). However, in the long-term, automation is likely to save money. Three other states have already implemented clean slate legislation—including Pennsylvania, Utah and New Jersey, and one study found the savings to be dramatic over time, with the cost-per-clearance for one petition around 5 cents after automation (compared to a cost in the thousands in a petition-based model).³¹

CONCLUSION

Expungements are life-changing. They open doors to employment and housing, creating stability not just for the individual and their family unit, but for entire communities. For Connecticut business owners, they open up the employment pool, allowing more eligible, loyal and productive members to be considered.³² For our economy, lost GDP dollars are restored as individuals become viable contributors, consumers and taxpayers. Our criminal justice system reaps the benefits because expungements are linked with extremely low rates of re-offense and increased public safety.³³ And, most importantly, for the individual, dignity is restored.

But until expungements are automated, we are unlikely to see their full benefit. By automating and expanding expungement law, Connecticut has an opportunity this session to pass a bipartisan piece of legislation that would truly improve the lives of millions of individuals.

ABOUT THE AUTHOR

Nila Bala is the associate director of criminal justice and civil liberties, and a senior fellow, at the R Street Institute, where she primarily focuses on policies to advance reforms in juvenile and economic justice.

ENDNOTES

1. Chidi Umez and Rebecca Pirius, "Improving Access to Licensed Occupations for Individuals With Criminal Records," National Conference of State Legislatures, July 17, 2018. <https://www.ncsl.org/research/labor-and-employment/barriers-to-work-individuals-with-criminal-records.aspx>.
2. Collateral Consequences Inventory, "National Inventory of Collateral Consequences of Conviction: Connecticut," Council for State Governments Justice Center, last accessed Jan. 28, 2020. https://nccs.csgjusticecenter.org/database/results/?jurisdiction=260&consequence_category=&narrow_category=&triggering_offense_category=&consequence_type=&duration_category=&page_number=1.
3. Tianyin Yu, "Employment and Recidivism," Evidence Based Professionals Society, Jan. 30, 2018. <https://www.ebpsociety.org/blog/education/297-employment-recidivism>.
4. Richard Cho et al., "FINAL Housing Subcommittee Collateral Consequences Handout Oct 2019," Council on Collateral Consequences of a Criminal Record Housing Subcommittee, Aug. 27, 2019. https://www.ccca.ct.gov/lab/tfs/20190827_Council%20On%20The%20Collateral%20Consequences%20Of%20A%20Criminal%20Record/Housing%20Subcommittee%20Materials/FINAL%20Housing%20Subcommittee%20Collateral%20Consequences%20Handout%20Oct%202019.pdf.
5. "Clean Slate Campaign," The Center for American Progress, January 2020. <https://cleanslateinitiative.org>.
6. Board of Pardons and Parole, "Pardon Application Process and Instructions," State of Connecticut, last accessed Jan. 28, 2020. <https://portal.ct.gov/BOPP/Pardon-Division/Pardon/Pardon-Application-Process>.
7. Board of Pardons and Parole, "Pardon FAQ's," State of Connecticut, last accessed Jan. 28, 2020. <https://portal.ct.gov/BOPP/Pardon-Division/Pardon/Pardon-FAQs>.
8. Ibid. The current process allows for an expedited decision without a hearing for non-violent offenses.
9. Kelan Lyons, "Lamont to introduce Clean Slate legislation in next session," The Connecticut Mirror, Jan. 8, 2020. <https://ctmirror.org/2020/01/08/lamont-to-introduce-clean-slate-legislation-in-next-session>.
10. James Ruane, "How Long Does the Connecticut Pardon Process Take?", Mr. Pardons, Nov. 30, 2016. <https://mrpardons.com/2016/11/30/long-pardon-process-take>; Jay Ruane, "Frequently Asked Questions About the Connecticut Pardon," Ruane Attorneys, May 14, 2019. <https://www.ruaneattorneys.com/connecticut-criminal-defense/connecticut-pardons-expungements/connecticut-pardon-frequently-asked-questions>.
11. Author interview with Veronica Rogers (telephone), Jan. 13, 2020.
12. Board of Pardons and Parole, "Board of Pardons and Parole Statistical Information," State of Connecticut, last accessed Jan. 28, 2020. <https://portal.ct.gov/BOPP/Research-and-Development-Division/Statistics/Statistics>.
13. Ibid.
14. Conn. Gen. Stat. § 54-142a(d) and (e). <https://lcc.org/toolkits/sealing/Connecticut%20Sealing%20Statute.pdf>.
15. See, e.g., Roy Maurer, "When Background Screens Turn Up Criminal Records," Society for Human Resource Management, May 5, 2014. <https://www.shrm.org/resourcesandtools/hr-topics/risk-management/pages/background-screens-criminal-records.aspx>; Kai Wright, "Boxed In: How a Criminal Record Keeps You Unemployed For Life," The Nation, Nov. 6, 2013. <https://www.thenation.com/article/archive/boxed-how-criminal-record-keeps-you-unemployed-life>.
16. J.J. Prescott and Sonja B. Starr, "Expungement of Criminal Convictions: An Empirical Study," Harvard Law Review (Forthcoming 2020), p. 1. <https://ssrn.com/abstract=3353620>.
17. Cherrie Bucknor and Alan Barber, "The Price We Pay: Economic Costs of Barriers to Employment for Former Prisoners and People Convicted of Felonies," Center for Economic and Policy Research, June 2016. <http://cepr.net/publications/reports/the-price-we-pay-economic-costs-of-barriers-to-employment-for-former-prisoners-and-people-convicted-of-felonies>.
18. Lyons. <https://ctmirror.org/2020/01/08/lamont-to-introduce-clean-slate-legislation-in-next-session>.
19. Ryan Nunn, "Occupational Licensing and American Workers," The Brookings Institute, June 21, 2016. <https://www.brookings.edu/research/occupational-licensing-and-the-american-worker>.

20. Marc E. Fitch, "Connecticut has 18th most onerous occupational licensing laws, according to Institute for Justice," *Yankee News*, Nov. 14, 2017, <https://yankeeinstitute.org/2017/11/14/connecticut-has-18th-most-onerous-occupational-licensing-laws-according-to-institute-for-justice>.

21. *Ibid.*

22. Civil Justice Clinic, "Re: Voter Disenfranchisement in Connecticut," Quinnipiac University School of Law, Oct. 29, 2019, https://www.cja.ct.gov/lab/tis/20190827_Council%20on%20The%20Collateral%20Consequences%20Of%20A%20Criminal%20Record/Research%20Subcommittee%20Materials/Felony%20Disenfranchisement%20in%20Connecticut%2010.29.19.pdf.

23. Conn. Gen. Stat. § 51-217(a)(2), <https://law.justia.com/codes/connecticut/2012/title-51/chapter-884/section-51-217>.

24. Guy Padraic Hamilton-Smith and Matt Vogel, "The Violence of Voicelessness: The Impact of Felony Disenfranchisement on Recidivism," *Berkeley La Raza Law Journal* 22:2 (2015), p. 423, <https://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1252&context=hlrl>.

25. Tanya Arditi, "RELEASE: Nearly Half of U.S. Children Have at Least 1 Parent With a Criminal Record, According to New Data From the Center for American Progress," Center for American Progress, Dec. 10, 2015, <https://www.americanprogress.org/press/release/2015/12/10/127088/release-nearly-half-of-u-s-children-have-at-least-1-parent-with-a-criminal-record-according-to-new-data-from-the-center-for-american-progress>.

26. Prescott and Starr, p. 1, <https://ssrn.com/abstract=3353620>.

27. SB 691, "An Act Concerning Erasure of Certain Misdemeanor Criminal Records and Expedited Pardons Review for Certain Felony Offenses," 2019, https://cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill_num=SB-691.

28. See, e.g., Alfred Blumstein and Kiminori Nakamura, "Redemption in the Presence of Widespread Criminal Background Checks," *Criminology* 47:2 (May 2009), p. 331, <https://www.ncjrs.gov/pdffiles1/nij/226872.pdf>.

29. *Ibid.*, p. 337.

30. Phoenix Ronan, "SB-691 An Act Concerning Erasure of Certain Misdemeanor Criminal Records and Expedited Pardons Review for Certain Felony Offenses," Office of Fiscal Analysis, April 29, 2019, <https://cga.ct.gov/2019/FN/pdf/2019SB-00691-R000832-FN.pdf>.

31. Colleen V. Chien, "The Second Chance Gap," *Michigan Law Review* (Forthcoming, 2020), p. 1, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3265335.

32. Jennifer Hickey Lundquist et al., "Does a Criminal Past Predict Worker Performance? Evidence from One of America's Largest Employers," *Social Forces* 96:3 (March 2018), pp. 1039–68, <https://doi.org/10.1093/sf/sx092>.

33. Prescott and Starr, p. 4, <https://ssrn.com/abstract=3353620>.